

EXHIBIT 11

Declaration of
Alison O'Brien

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

LOCAL 8027, AFT-NEW HAMPSHIRE, AFL-CIO, RYAN
RICHMAN, JOHN DUBE and JOCEYLN MERRILL,
teachers in the New Hampshire Public Schools, and
KIMBERLY GREEN ELLIOTT and MEGHAN EVELYN
DURDEN, parents or guardians of children in the New
Hampshire public schools.

Plaintiffs,

v.

FRANK EDELBLUT, in his Official Capacity as
Commissioner of the DEPARTMENT OF EDUCATION
("DOE"), CHRISTIAN KIM in his Official Capacity as the
Chair of the NEW HAMPSHIRE COMMISSION ON
HUMAN RIGHTS, and JOHN FOMELLA in his Official
Capacity as ATTORNEY GENERAL of the State of New
Hampshire.

Defendants.

Civil No. 1:21-cv-01077-PB

ANDRES MEJIA,
CHRISTINA KIM PHILIBOTTE, and
NATIONAL EDUCATION ASSOCIATION-NEW
HAMPSHIRE,

Plaintiffs,

v.

FRANK EDELBLUT, in his official capacity only as the
Commissioner of the New Hampshire Department of
Education,
JOHN M. FORMELLA, in his official capacity only as the
Attorney General of the State of New Hampshire,
AHNI MALACHI, in her official capacity only as the
Executive Director of the New Hampshire Commission for
Human Rights,
CHRISTIAN KIM, in his official capacity
only as the Chair of the New Hampshire Commission for
Human Rights,
KEN MERRIFIELD, in his official capacity only as the
Commissioner of the Department of Labor,

Defendants.

DECLARATION OF ALISON R. O'BRIEN

I, Alison R. O'Brien, pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. I live in Rockingham County, New Hampshire.
2. I am a high school Social Studies teacher at Windham High School in Windham, New Hampshire. I teach College Preparation American Studies (“C.P. Am. Studies”) and Advanced Placement United States History (“AP US History”). I have been a teacher for 14 years, the past 9 of which have been at Windham High School.
3. I am a member of NEA-NH and the Windham Education Association.
4. I am certified by the State Board of Education, and thus, am subject to the “Educator Code of Conduct” (N.H. Admin. Code R. Ed. 510-512) that is now embedded within N.H. Rev. Stat. Ann. (“RSA”) 193:40 (hereinafter, the “Banned Concepts Act” or the “Act”). *See* RSA 193:40, V.
5. I am offering this Declaration in my individual capacity and not on behalf of the District that employs me.
6. I have been directly impacted and harmed by the Banned Concepts Act. In the spring of 2022, I was subject to an “investigation” by the New Hampshire Department of Education into one of the lessons I taught to my 10th grade C.P. Am. Studies class.
7. On April 19, 2022, the Social Studies Department Director (my direct administrative supervisor) and the English Department Director (“the Directors”) came to my classroom to inform me that a parent had complained to a Windham School Board member that I had shown a video that was, in their opinion, “offensive” and that my class focused too much “on the oppression of just one group and was not a balanced view of history.” The school board member had contacted the Superintendent’s office. The Social Studies Department Director was also the acting Assistant Superintendent and had come to discuss the lesson with me as part of her investigation into this complaint.
8. The parent complaint concerned two music videos that I showed: “Formation” by Beyoncé (I only show a section of this video) and “This is America” by Childish Gambino. I assumed the parent complained that I had violated the newly passed Banned Concepts Act given the comments made about the focus I was placing on “oppression” of one group.
9. I show these videos as part of a unit on the Harlem Renaissance. In the same lesson we also listen to Strange Fruit by Billie Holiday, read poetry, and study paintings by Harlem Renaissance artists. I then ask students if they see any connections between these two modern music videos and the art and culture of the Harlem Renaissance. We explore their analysis as a class.

10. In this lesson I tell students that the point of the exercise is not to decide if we agree or disagree with the message of the artist, nor do I require them to agree with the message. Instead, students are asked to look for historical connections between these modern artists and those of the Harlem Renaissance.

11. Using modern examples of artists that students are aware of helps them to make connections to historical events such as the Harlem Renaissance in a manner that is relevant to them so they can better understand, analyze, and critique the information. This technique is known as Semantic Encoding as it gives the students a frame of reference to understand the historical context. Throughout my career I have used this technique with many other materials as it helps students be successful.

12. I have received praise for using these techniques in formal administrative observations and in feedback from numerous students. This technique is also supported by the New Hampshire Curriculum Framework for Social Studies. Specifically:

- a. SS:HI:3: World Views and Value systems and their Intellectual and Artistic Expressions includes SS:HI:12:3.2: which states that students will “[a]nalyze how the arts and science often reflect and/or influence major ideas, values and conflicts of particular time periods, e.g., the impact of the Enlightenment on the founding of our nation or the Harlem Renaissance. (Themes: A: Conflict and Cooperation, E: Cultural Development, Interaction, and Change, A0: Human Expression and Communication)”;
- b. SS:HI:12:3.3: which states that students will “Critique how the art, music and literature of our nation have been influenced by groups, e.g., the Spanish colonists in the Southwest or the 60s counter culture movement. (Themes: E: Cultural Development, Interaction, and Change, A0: Human Expression and Communication)”;
- c. SS:HI:12:3.4: which states that students will “Analyze the spread of American ideas and culture around the world using examples, e.g., the Bill of Rights or popular music. (Themes: B: Civic Ideals, Practices, and Engagement, E: Cultural Development, Interaction, and Change, F: Global Transformation)”.

13. When they inquired about the videos, I explained the lesson to the Directors and neither said I had violated the Banned Concepts Act. They said they did not intend to do any further investigation or issue any discipline. My impression from the meeting was that they both

understood the point of the lesson and respected the teaching technique. I was not directed to cease teaching the lesson nor was I told to stop showing the particular material. At that point I believed there would be nothing more that would come of the complaint.

14. Around 12:15 p.m. that same day, I was visited by the Windham High School Assistant Principal (“A.P.”) while I was teaching my class. I was asked to leave the class to speak with him in the hall. This is a conspicuous event which students and staff members take note of when it happens, particularly when it interrupts instruction. The Assistant Principal asked me if I had shown the “This is America” music video to the class. He showed me his phone which had a text message showing and the link to the music video had been texted to him. I did not see who the text was from.

15. I told the Assistant Principal that I had met with the Directors that morning on the same issue and asked if he would speak with them as I wanted to return to my ongoing class, which had been left without instruction as I had been so suddenly removed.

16. While I was teaching another class later in the day, I was summoned to the Principal’s office. I received this call around 1:45 pm and our school day ends at 2:17 pm. When I asked if I could come down at the end of the day instead so I could finish the instruction, I was told no, I had to come immediately and that the Assistant Principal was coming to cover my class. Again, this is a conspicuous event which was not lost on my students or colleagues who observed it.

17. Both the Principal and the Social Studies Department Director were there when I arrived. They told me that the SAU office had been contacted by Richard Farrell, an Investigator from the Department of Education who conveyed that he was “investigating” me based on complaints the Department had received from parents regarding the two videos.

18. Since the Social Studies Department Director was also the Assistant Superintendent, she had spoken to Investigator Farrell when he called the office of the Superintendent. Investigator Farrell asked her if she had read Commissioner of Education Frank Edelblut’s most recent Op Ed in the *New Hampshire Union Leader*.¹ He told her “she might want

¹Commissioner Edelblut authored an Op-Ed called “Education’s Sacred Trust” on April 15, 2022 where he criticized “activist educators who might be knowingly dismantling the foundations of a value system [parents] are attempting to build,” provided 68 pages of “actual instructional material from New Hampshire schools that parents have identified as conflicting with their values,” and said the materials demonstrated “biases [which] are beginning to seep into our own institutions.”

to look at it so she could understand the context of his investigation.” She had brought a copy of the Op Ed to the meeting for me to look at.

19. As I had already provided the background information about the videos to the administration, the purpose of the meeting appeared to be to tell me I was being “investigated” by the Department, to relay Investigator Farrell’s comments to me about the Commissioner’s Op-Ed, and to give me a copy of the Op-Ed.

20. I felt confused and concerned when I heard the Department of Education Investigator was investigating my teaching lesson. I was confused because I did not believe I had taught anything contrary to the Act, or the Educator Code of Conduct broadly, and yet the Department was taking an active interest in my actions. I didn’t understand what I could have done wrong that would have necessitated an investigation. I was concerned because I know that the Department has the ability to take action which can lead to revoking my teaching license.

21. This episode became known to my fellow teachers at the High School. It is extremely rare for a teacher to be interrupted three times throughout the day by administrators. Prior to them knowing the substance of the complaint, my colleagues certainly knew something serious was going on.

22. My colleagues later learned that the Department was investigating my actions. I had multiple colleagues tell me they did not want the same thing to happen to them and that they were scared it would.

23. One colleague decided not to show a clip from a popular TV show because she did not want to face the same kind of scrutiny and stress that I had faced.

24. Another teacher was looking to incorporate some modern data about how race impacted business practices in a relevant course and decided against it due to this incident.

25. Ultimately, even though this episode was very disruptive to my work and personal life, and caused me much concern and stress, I never heard anything more from the Department of Education. The Department of Education never formally opened an investigation and I later learned this was just a “background inquiry” that was done prior to a formal investigation being opened. I was never told directly that I was not being “investigated.”

26. The Department of Education never made a public statement or retraction of the original statement that I was being “investigated.”

27. The Department of Education never clarified for me, the administration, or my colleagues what might have been the specific cause for concern.

28. I was left to only make assumptions as to those concerns. This means that to this day, I don't know if I could be subject to investigation again regarding teaching this same lesson.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of July, 2023

/s/ Alison R. O'Brien

Alison R. O'Brien